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February 6, 2003

ORIGINAL

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Szcretary
Room TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Re: Dockct Nos. 01-338; 96-98; 98-147
Ex Parte

Dear Ms. Dortch:

On February 6,2003, William M. Shay, Ash Bowden, and Merd Babcock, representing Franklin Square Communications, Inc. (the Company), had a telephonic meeting with William Maher, Chief of the Wireline Competition Bureau, and Scott Bergmann, Legal Counsel to the Wireline Competitiorr Bureau Chief, to make our views known about the FCC's Triennial Review proceeding. We made the following points:

1. The UNE-P structure should continue as a local service platform and only the states should make the factual findings necessary to support a decision to de-list any UNE elements. Our evidence shows that switching impairment prevails in secondary markets that the Company is targeting, and that owners of other competitive "retail" switches do not want to "enable" other retail competitors by making capacity on their switches available; smaller carriers like the Company need competitive "wholesale" switches in order to provide service if incumbent switching is de-listed.
2. As a start up competitive carrier, the institutional and individual investors with whom we have had discussions are not willing to invest any capital in network facilities, especially prior to the time that such facilities could be supported adequately with an existing customer base. The days of "if you build it, they will come" are long gone.
3. If all markct participants are required to install their own switches, we will see only a few large companies in the business. The 1996 Act's goal was to enable competition for local service and was not intended to require facilities investment by all competitors. Participation by smaller entrants like the Company should be encouraged.

4. The incumbent monopoly carriers will have little incentive to invest, particularly in innovative network architecture, absent the competitive pressure that UNE-P has begun and will continue to provide.
5. If switching or any other important elements were de-listed absent the factual basis we think should be required, the result is that incumbents will have been rewarded for their intransigence in complying with the 1996 Telecommunications Act. Returning the incumbents to their monopoly status will cause retail prices to rise and innovation and customer focus to worsen. This would be most unfortunate in that it would take away from consumers some of the benefits of competition that have just begun to be realized.
6. The FCC should provide stability in the governing rules by continuing UNE-P, which will restore credibility to the industry and the FCC, and provide smaller competitors like the Company an opportunity to attract capital and compete in an economically viable way.
7. It would be a colossal waste to terminate UNE-P now, after more than six years of efforts to finalize the details, before we have a chance to see what the competitors may do to develop and help secure their customer bases through their own innovative network architecture investments and other methods of bringing benefits and value to customers.
8. So-called "compromise" proposals by some incumbents are not impressive. They are based on faulty premises and facts, are not applicable across all market areas, and have not been subjected to the type of due process-based scrutiny that is required. Such scrutiny can only occur in a contested hearing setting, preferably at a state level.

Very Truly Yours,